1947. **File No.** B. Waste Lands (claims) 47

PROF

Legal DEPARTMENT

B. BRANCH

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Subject:— L. A. Bill No XXXII of 1947

A Bill to repeal the Waste Lands (claims) (Bombay Repeal) Act 1943 and the Waste Lands (claims) Act 1863

Bombay Act No. XLVII of 1947

File No. B. Waste Lands (claims) | 47

Std. Sectt. Slip 24 B e.

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C O N T E N T S.

Legal Department File No. B. Waste Lands (Claims)/47

666

Sr. No.	R.I./G.No.	Subject.	Pages.
		A Bill to Repeal the Bombay Waste Lands (Claims)(Bombay Repeal) Act, 1943, and the Waste Lands (Claims) Act, 1863.--	
1	9333 21/12/46	Statement of the case for Adv. General's opinion. ---	1-2
2	4 21/1/47	Opinion in respect of the proposed enactment. ---	3-4
3	1975 27-2-47	Remarks on the Revised draft Bill	5-6
4	11249 25-11-47	Seeking Governor's Assent.---	7-10
5	14559(A) 4/12/47	Whether the Bill should be reserved for Governor-General's assent.---	11-12
6	11807 8/12/47	Governor-General's assent is not necessary ---	13-16
7	16068 15/12/47	Forwarding an authentic copy of the Act., ---	17-18
8	6735 30-5-47	Publication of the Bill ---	19-24
9	13074 15/12/47	Publication of the Act.---	25-34
10		Debates.	33-36

28/5.

28/5

22/5

Office of the R.L.A.

Statement of Case.

The Bombay Waste Lands (Claims) (Bombay Repeal) Act, 1943, repealed the Waste Lands (Claims) Act, 1863, in its application to the Province of Bombay. The question for consideration is whether it is necessary to repeal this Bombay Act IX of 1943, it being an Act made by the Governor during the section 93 regime.

2. A section 93 Act of a Governor shall continue to have effect uhtil two years have elapsed from the date on which the Proclamation ceases to have effect unless sooner repealed or re-enacted by Act of the Provincial Legislature. Since, however, the Bombay Act, IX of 1943 expressly and absolutely repeals the Act of 1863, subject only to the proviso about the continuance of claims preferred or objections taken under that Act before the date of the repealing Act, there is a total repeal of the Act of 1863. Although sections 7(a) and 8 of the Bombay General Clauses Act, 1904, do not in terms apply to the case under consideration, the principle underlying these sections will apply and the expiry of the repealing Act IX of 1943 by efflux of time under section 93 of the Government of India Act, 1935, will not revive the said Act of 1863. It does not therefore appear necessary expressly to repeal Bombay Act IX of 1943, as proposed.

3. On the other hand it is contended that if Bombay Act IX of 1943 is not repealed but allowed to lapse by efflux of time the legal position about "revival" will be rather difficult. "If an Act which repeals an earlier Act is itself only a temporary Act, the general rule is that the earlier Act is revived after the temporary Act is spent. But there will be no revivor if it was clearly the intention of the Legislature to repeal the earlier,-----

earlier Act absolutely. It is a question of construction upon any Act professing to repeal or interfere with the provisions of a former law, whether it operates as a total or partial and temporary repeal. (See Craies on Stature Law page 357). It is therefore suggested that it would be safer to repeal the Governor's Act IX of 1943, and leave it at that.

4. As the point is important the Advocate General will be so good as to advise whether Bombay Act IX of 1943 may be repealed or left to expire by efflux of time.

Id/- D.V.V.
Remembrancer of Legal Affairs.

U.O.R. to the Advocate General, No. 9333, dated the 21st. December 1946.

PSM. 21/5
4C

No. 4 of 1947.

ADVOCATE GENERAL's CHAMBERS,
HIGH COURT,

Bombay, 21st January 1947.

U.O.N. to the Advocate General Bombay, -
No. 9333 dated the 21st December 1946.

OPINION.

Whether the expiry of a temporary Act, which purports to repeal another Act causes a revival of the latter is a matter which depends on the interpretation of the former. If the intention to repeal, as expressed in the temporary, Act, is clear, final and absolute, then the Repealed Act will not be revived notwithstanding the expiry of the temporary Act.

There can be, in my opinion, no question that although Bombay Act IX of 1943, was a temporary Act, in the sense that it was to expire after the statutory period of two years, its effect on the Act of 1863 was clearly intended to be final and absolute, i.e. the repeal intended and enacted thereby was permanent and not merely temporary. The sole object of Act IX of 1943 was the repeal.

But as stated in Crai-ses on Statutes -page 357 the presumption is that a temporary Act repeals temporarily and as in matters of construction there are always likely to be differences of opinion, it would seem that it would be safer to repeal Act IX of 1943.

Sd/-

Advocate General.

PSM. 21/5
4C

Legal Department.

A copy of the opinion of the Advocate General who was consulted in this case together with a Statement of the Case is sent herewith.

2. The requisite draft Bill to provide for the repeal of the Bombay Waste Lands (Claims)(Bombay Repeal) Act, 1943, and the Waste Lands (Claims) Act, 1863, together with the draft of the Statement of Objects and Reasons, is sent herewith.

3. The subject-matter of the Bill falls under entries 1, 2 and 21 in the Provincial Legislative List and entry 4 in the Concurrent Legislative List in the Seventh Schedule to the Government of India Act, 1935. As the Bill does not contain any provision repugnant to the provisions of any earlier Federal law or existing Indian law relating to a matter in the Concurrent Legislative List, it is not necessary to reserve the Bill for the consideration of the Governor-General with reference to section 107(2) of the Government of India Act, 1935. The Bill will require the previous sanction of the Governor under section 299(3) of the Government of India Act, 1935, but does not require his recommendation. It does not affect any special responsibility of the Governor under section 52(1) of the Government of India Act, 1935.

Id/- D.V.V.

Secretary to Government.

U.R. to R.D.,No., 1975, dated the 27th February 1947.

PSM. 21/5
4C

No. 11249

Legal Department,

Bombay Castle, 25th November 1947.

From

P.M.Lad, Esquire, I.C.S.,
Secretary to the Government of Bombay;

To

The Private Secretary to the Governor of Bombay.

Subject:- A Bill to repeal the Waste Lands (Claims) (Bombay Repeal) Act, 1943, and the Waste Lands (Claims) Act, 1863.

Sir,

With reference to section 75 of the Government of India Act, 1935, I am directed to forward herewith for the Assent of His Excellency the Governor, the authentic copy of the Bill to repeal the Waste Lands (Claims) (Bombay Repeal) Act, 1943, and the Waste Lands (Claims) Act, 1863, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 10th September 1947 and on the 17th October 1947, respectively.

2. The subject-matter of the Bill falls under entries 1, 2 and 21 in List II and entry 4 in List III in the Seventh Schedule to the Government of India Act, 1935.

3. As the Bill does not contain any provision repugnant to the provisions of any earlier Dominion law or existing law relating to a matter in the Concurrent Legislative List, it is not necessary to reserve the Bill for the consideration of the Governor-General with reference to section 107(2) of the Government of India Act, 1935.

4. The date on which His Excellency the Governor's assent is given may kindly be entered in

1. Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons.	
2. Bill as read for the third time and passed by the Bombay Legislative Assembly and as introduced in the Bombay Legislative Council.	

PSM. 21/5 4C

3. Bill as read for the third time and passed by the Bombay Legislative Council	the endorsement.
4. Extracts from the proceedings of the Bombay Legislative Assembly dated the 10th September 1947 and of the Bombay Legislative Council dated the 17th October 1947.	5. I also forward herewith one

copy of each of the papers noted in the margin. The Bill was not referred to a Select Committee.

I have the honour to be,

Sir,

Your most obedient servant,

Id/- P.MLL.
25/11/47

Secretary to Government.

Through

The Secretary, to the Government of Bombay,

Revenue Department.

PSM. 21/5
4C

No. P.S.G. - 5607
Office of the Private Secretary to the Governor,
Government House
Bombay, 3rd December, 1947.

From

L.E.Bagshawe, Esquire, I.C.S.,
Private Secretary to the Governor of Bombay,

To

The Secretary to the Government of Bombay,
Legal Department.

Subject:- A Bill to repeal the Waste Lands (Claims) (Bombay Repeal) Act, 1943, and the Waste Lands (Claims) Act, 1863.

Sir,

With reference to your letter No. 11249 , dated the 29th November 1947, forwarding for the assent of His Excellency the Governor the authentic copy of the Waste Lands (Claim) (Bombay Repeal) Bill, 1947, I am to invite attention to your letter No. 5895, dated 1st September 1943, in which it was stated that as the provisions of the Waste Lands (Claim) Act, 1863, it was necessary to reserve the Waste Lands (Claims) (Bombay Repeal) Act, 1943, before enactment for the consideration of His Excellency the Governor-General with reference to section 107(2) of the Government of India Act, 1935.

clause 2 of the bill were repugnant to the provisions of

2. For the same reason it seems that the present Bill will have to be similarly reserved for the consideration for of His Excellency the Governor-General , and I am to request that the matter may be re-considered in view of the opinion expressed in September 1943.

Your obedient servant,

Sd/- L.E.Bagshawe.

Private Secretary to the Governor of Bombay.

PSM. 21/5
4C

No. 11807
Legal Department,
Bombay Castle, 8th December 1947.

From

P.M.Lad, Esquire, I.C.S.,
Secretary to the Government of Bombay.

To

The Private Secretary to the Governor of Bombay.

Subject:- A Bill to repeal the Waste Lands (Claims)(Bombay Repeal) Act, 1943, and the Waste Lands (Claims) Act, 1863.

Sir,

With reference to your letter No. P.S.G. -5607, dated the 3rd December 1947, I am to state as follows:-

2. The Waste Lands (Claims)(Bombay Repeal) Act, 1943, provided for the repeal of the Waste Lands (Claims) Act, 1863, and, as the latter Act related to a matter in the Concurrent Legislative List, the Bill in respect of the former Act was reserved for the consideration of the Governor-General. The present Bill provides for the repeal of the Waste Lands (Claims)(Bombay Repeal) Act, 1943, as well as the Waste Lands (Claims) Act, 1863,. The Waste Lands (Claims)(Bombay Repeal) Act, 1943, is being repealed because it is a temporary Act enacted during section 93 regime. The Waste Lands (Claims) Act, 1863, has already been repealed and is no longer now in force. The Bill provides for the repeal of this Act also only by way of abundant caution, lest it might be argued that, by the repeal of the Waste Lands (Claims) (Bombay Repeal) Act, 1943, when was a temporary statute, this old Act automatically revives. There can, however, be no such revival, until after the present Bill is enacted

into---

enacted into law. As the Waste Lands (Claims) Act, 1863, is not at present in force, it is not an existing law within the meaning of section 107 of the Government of India Act, 1935. The present Bill thus contains no provision which ~~x~~ is repugnant to the provision of any existing law relating to a matter in the Concurrent Legislative List and therefore, ~~it~~ does not require to be reserved for theconsideration of the Governor-General with reference to section 107 (2) of the Government of India Act, 1935.

3. The accompaniments to your letter of the 3rd December 1947 are returned herewith.

Your obedient servant,

Id/- P.M.L.

Secretary to Government.

PSM. 22/5
4C

No. P.S.G. -5778
Office of the Private Secretary to the Governor,
Government House,
Bombay, 13th December 1947.

From

L.E.Bagshawe, Esquire, I.C.S.,
Private Secretary to the Governor of Bombay.

To

The Secretary to the Government of Bombay,
Legal Department.

Subject:- The Waste Lands (Claims)(Bombay Repeal) Bill, 1947.

Sir,

With reference to the correspondence resting with your letter No. 11807, dated the 8th December 1947, on the subject noted, above, I return herewith, with His Excellency the Governor's assent signified thereon, the authentic copy of the Waste Lands (Claims)(Bombay Repeal) Bill 1947.

Your obedient servant,

Sd/- L.E.Bagshawe.

Private Secretary to the Governor of Bombay.

PSM. 22/5
4C

Bills.

A Bill to repeal the Waste Lands (Claims)(Bombay Repeal) Act, 1943, and the Waste Lands (Claims) Act, 1863.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 6735.

Bombay Castle, 30th June 1947.

Memorandum from the Revenue Department No. 6353-B/39, dated the 24th June 1947:-Transferring for necessary action, the papers relating to a Bill to repeal the Waste Lands (Claims) (Bombay Repeal) Act, 1943, and the Waste Lands (Claims) Act, 1863.

RESOLUTION:- The Bill with the Statement of Objects and Reasons should be forwarded to the Manager, Government Central Press, Bombay, for publication in the Bombay Government Gazette, dated the 30th June 1947, as Bill No. XXXII of 1947.

2. The Bill and the Statement of Objects and Reasons should be translated into Marathi, Gujarati, Kannada and Hindustani (In Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette, on the 7th July 1947.

3. The dates of the various publications should be reported to the Secretary to the Bombay Legislative Assembly.

By order of the Governor of Bombay,

Sd/- D.V.Vyas,
Secretary to Government.

To
RRR.

The Manager, Government Central Press, Bombay (with the Bill and S.O.R. and with a request that 230 Gazette copies of the Bill and S.O.R. may be forwarded to the Secretary to the Bombay Legislative Assembly for distribution of the Members of

the Bombay Legislative Assembly and 25 copies

for the use of the Legal Department).

The Revenue Department,	:	With a
The Oriental Translator to Government	:	copy of the
The Secretary to the Bombay Legislative Assembly	:	Bill and
The Director of Publicity, Bombay.	:	S.O.R.

PSM. 22/5
4C

Acts.
Publication of the Waste Lands (Claims)(Bombay Repeal) Act, 1947.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 13074.

Bombay Castle, 18th December 1947.

Letter to the Private Secretary to the Governor, No. 11249, dated the 25th November 1947.

Letter from the Private Secretary, to the Governor, No. P.S.G.- 5607, dated the 3rd December 1947.

Letter to the Private Secretary to the Governor No. 11807, dated the 8th December 1947.

Letter from the Private Secretary to the Governor, No. P.S.G. - 5778, dated the 13th December 1947.-

"With reference to the correspondence resting with your letter No. 11807, dated the 8th December 1947, on the Subject noted above, I return herewith, with His Excellency the Governor's Assent signified thereon, the authentic copy of the Waste Lands (Claims)(Bombay Repeal) Bill, 1947."

RESOLUTION:- The law should be published as Bombay Act, No. XLVII of 1947, in the Bombay Government Gazette dated the 18th December 1947.

2. The Act should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Revenue Department with reference to the Memorandum from that Department No. 6353-B/39, dated the 24th June 1947..

By order of the Governor of Bombay,

Sd/- S.B.Palekar,

Deputy Secretary to Government,.

To

The Manager, Government Central Press, Bombay, (with a

22 copy of act and with a request that 30 Gazette copies of the Act may be forwarded to the Legal Department).,

The Revenue Department,	With a
The Oriental Translator to Government,	copy of
The Bombay Legislature Department,	the Act.
The Director of Publicity, Bombay.	

PSM. 22/5
4C

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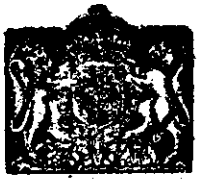
28/5

Registered No. B-1



The Bombay Government Gazette

PUBLISHED BY AUTHORITY

THURSDAY, 18TH DECEMBER 1947.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV

(1) Acts of the Local Legislature of the Bombay Province and (2) Acts of the Indian Legislature assented to by the Governor General.

CONTENTS.

	Pages
BOMBAY ACT No. XLVII OF 1947—An Act to repeal the Waste Lands (Claims) (Bombay Repeal) Act, 1943, and the Waste Lands (Claims) Act, 1863	389-390

The following Act of the Bombay Legislature having been assented to by the Governor on the 12th December 1947 is hereby published for general information.

P. M. LAD,

Secretary to the Government of Bombay,
Legal Department.

BOMBAY ACT No. XLVII OF 1947.

(First published, after having received the assent of the Governor, in the "Bombay Government Gazette" on the 18th December 1947.)

An Act to repeal the Waste Lands (Claims) (Bombay Repeal) Act, 1943, and the Waste Lands (Claims) Act, 1863.

26 Geo. 5, Ch. 2. Bom. IX of 1943. XXIII of 1863.

WHEREAS in view of the provisions of sub-section (4) of section 93 of the Government of India Act, 1935, it is expedient to repeal the Waste Lands (Claims) (Bombay Repeal) Act, 1943, and the Waste Lands (Claims) Act, 1863; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Waste Lands (Claims) (Bombay Repeal) Act, 1947.

Repeal of Bom. IX of 1943 and Act XXIII of 1863.

2. The Waste Lands (Claims) (Bombay Repeal) Act, 1943, and the Waste Lands (Claims) Act, 1863, are repealed:

Bom. IX of 1943. XXIII of 1863.

Provided that in respect of any claim preferred or objection taken under the Waste Lands (Claims) Act, 1863, before the date of the coming into operation of the Waste Lands (Claims) (Bombay Repeal) Act, 1943, all the provisions of the Waste Lands (Claims) Act, 1863, shall be given effect to as if this Act had not been passed.

XXIII of 1863. Bom. IX of 1943. XXIII of 1863.

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS.

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[To be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations to be published in the "Bombay Government Gazette". The dates of publication to be reported.]

The following Bill is published under the proviso to rule 80 of the Bombay Legislative Assembly Rules :—

L. A. BILL No. XXXII OF 1947.

A Bill to repeal the Waste Lands (Claims) (Bombay Repeal) Act, 1943, and the Waste Lands (Claims) Act, 1863.

26 Geo. 5, Ch. 2. Bom. IX of 1943. XXIII of 1863.

WHEREAS in view of the provisions of sub-section (4) of section 93 of the Government of India Act, 1935, it is expedient to repeal the Waste Lands (Claims) (Bombay Repeal) Act, 1943, and the Waste Lands (Claims) Act, 1863; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Waste Lands (Claims) (Bombay Repeal) Act, 1947.

Bom. IX of 1943. XXIII of 1863.

Repeal of Bom. IX of 1943 and Act XXIII of 1863.

2. The Waste Lands (Claims) (Bombay Repeal) Act, 1943, and the Waste Lands (Claims) Act, 1863, are repealed :

XXIII of 1863. Bom. IX of 1943. XXIII of 1863.

Provided that in respect of any claim preferred or objection taken under the Waste Lands (Claims) Act, 1863, before the date of the coming into operation of the Waste Lands (Claims) (Bombay Repeal) Act, 1943, all the provisions of the Waste Lands (Claims) Act, 1863, shall be given effect to as if this Act had not been passed.

STATEMENT OF OBJECTS AND REASONS.

Under sub-section (4) of section 93 of the Government of India Act, 1935, any law made by the Governor during the section 93 regime continues to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect unless sooner repealed or re-enacted by Act of the Provincial Legislature. It is considered desirable that the repeal of the Waste Lands (Claims) Act, 1863 (XXIII of 1863), made by Bombay Act No. IX of 1943 should continue. The Bill is intended to achieve this object.

Dated 23rd June 1947. (Signed) MORARJI DESAI.

By order of the Governor of Bombay

D. V. VYAS,

Secretary to the Government of Bombay,
Legal Department.

Bombay, dated 30th June 1947.

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS